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STAT PANEL SAID TO FIND C.I.A. ACTS ILLEGAL

Justice Department Aides'
View Reported on Opening
and Photographing Mail

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WASHINGTON, Aug. 3—Justice Department lawyers looking into possible wrongdoing by the Central Intelligence Agency have concluded that agency employees acted illegally in opening and photographing mail in transit between the United States and Communist countries, according to well-placed department officials.

The officials' assertion is the first report that the department panel set up to examine the range of the C.I.A.'s domestic activities, as well as its alleged involvement in foreign assassination plots, has reached a determination of illegality of any of the agency's operations that have been questioned.

One of the officials, all of whom asked not to be identified, said a principal problem faced by the panel, which is composed of about a dozen Justice Department lawyers, is that the Federal statute of limitations, normally five years in most felony cases, had nullified prosecution against many of the agency's activities in the nineteen fifties and nineteen sixties.

He said, however, that such was not the case with the C.I.A.'s mail-opening operations, which are said to have continued in the San Francisco area until 1971 and at Kennedy International Airport in New York until 1973.

The Justice Department, the officials said, is investigating all domestic C.I.A. activities of which it has knowledge, ranging from wiretapping and break-ins to the infiltration of political organizations and the administering of mind-altering drugs to unsuspecting victims.

An important consideration underlying all of the cases, they have said, is whether such activities, while taking place within the United States, were nonetheless consonant with the agency's mission of gathering and evaluating foreign intelligence

or with the responsibility of the executive branch to protect the national security.

The reported conclusion of the Justice lawyers—that the seas mail was illegal—may therefore hold significance for the eventual prosecution of other domestic activities by the agency that, like the mail openings, possessed an element of foreign involvement.

One high Justice official has said privately that some prosecutions were almost certain to grow out of the department's investigation.

Matter of Evidence

Other officials have cautioned, however, that it was still unclear whether the department would be able to assemble in the mail-opening cases evidence that was solid enough to sustain a criminal indictment of the agency employees who were directly involved.

One official said that the agents "were very astute" in concealing from post office employees their surreptitious opening and copying of letters bound for the Soviet Union and China.

The department's investigation, he said, might well dissolve into a matter of "Who struck John?"—a metaphor for the confusion that results from a welter of conflicting testimony and accusations unaccompanied by independent evidence.

One official pointed out, as an example of an incident that he said was clearly prohibited by Federal statute, the recent disclosure by the C.I.A. that it had detained for three years more than 100 pieces of mail from the Soviet Union to recipients in the United States.

Benjamin F. Bailar, the Postmaster General, said last month, in announcing the belated discovery, that the mail—85 postcards and 25 letters—had been given to the Justice Department "pending possible legal action against those responsible for opening and detaining it."

Without a Warrant

The Federal statute governing the Justice Department's investigation of the mail-tampering cases makes it a felony punishable by up to five years in prison to remove from a postal facility or to open and examine any piece of mail in the absence of a judicial search warrant, which the C.I.A. did not have.

William E. Colby, the Director of Central Intelligence, said last February that he did not expect criminal charges to be brought against any C.I.A. employees over their involvement in domestic activities.

Lawyers in the Justice Department's Criminal and Civil Rights Division which are coordinating the C.I.A. investigation, said later, however, that they had given Mr. Colby no such assurances and were waiting to see additional material, including that produced by the Rockefeller commission looking into domestic C.I.A. activities, before reaching any conclusions.

The commission reported in June that, from 1953 to 1973, the intelligence agency ran intermittent mail-opening programs at different times in New York, San Francisco, New Orleans and Hawaii.

The Hawaiian mail interception programs, the commission said, took place in the nineteen-fifties, but it termed both of them, like the New York and San Francisco operations, "unlawful."

- In 1970 and 1971

The commission reported that the San Francisco project, which was concerned with mail to and from Far Eastern countries, took place in 1970 and 1971 and involved removing and later returning selected pieces of mail from the West Coast postal facility for photographing and analysis.

The commission said the New

York project, which continued uninterrupted between 1953 and 1973, was finally halted by William J. Cotter, who learned of the project while an official of the C.I.A., which he left in 1969 to become chief postal inspector.

Mr. Cotter's predecessor, like most other postal officials, had believed that the agency's operations at postal facilities involved simply photographing the outsides of envelopes destined for the Communist target countries, which is legal.

In its last year of operation, the interception project at Kennedy Airport examined 2 million pieces of mail destined for overseas delivery and opened nearly 9,000 of them; the commission reported.

Among the letters that were opened, photographed and retained were two mailed to the Soviet Union in 1953 and 1960 by Bella S. Abzug, now a Manhattan Democratic Representative, while she was a practicing lawyer in New York.

The two letters had been sent in behalf of clients of Russian ancestry to an arm of the Soviet Government asking for assistance in finding other potential heirs in estate cases.